IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7610 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHKUMAR BALABHAI SOLANKI

Versus

KODINAGAR NAGAR PALIKA

Appearance:

1. Special Civil Application No. 7610 of 2002

MR DS VASAVADA for Petitioner No. 1

MR YV SHAH for Respondent No. 1

MR AY KOGJE, AGP, for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/10/2002

ORAL JUDGEMENT

Rule. Mr YV Shah waives service of rule on behalf of respondent No.1. Mr Kogje learned AGP waives

service of rule on behalf of respondents No.2 and 3.

2. Respondent No.1-Kodinar Municipality had submitted a proposal dated 12-2-1996 (Annexure B) to the Director of Municipalities requesting him to sanction creation of the post of Sanitary Inspector on the set-up of the Kodinar Municipality. Thereafter, by advertisement dated 7-12-1996 (Annexure C), the Municipality invited applications for the said post prescribing the qualifications as stated in the advertisement and the experience required. At the selection held pursuant to the said advertisement, the petitioner was appointed and selected on the post of Sanitary Inspector on temporary basis vide appointment order dated 20-8-1996 (Annexure D).

It appears that on 18-6-2002 (Annexure F), the Collector Junagadh called upon the Administrator of the respondent-Municipality to terminate the services of the employees who were appointed without obtaining any permission of the competent authority.

In view of the above direction of the Collector, the Municipality was about to terminate the services of the petitioner and, therefore, the petitioner filed the present petition on 12-8-2002.

3. While issuing notice, this Court granted ad-interim protection against termination of the petitioner's services.

4. At the hearing of this petition, both the learned counsel for the petitioner as well as the learned counsel for the Municipality have submitted that when the Municipality had submitted the proposal for sanction of creation of one post of Sanitary Inspector as far back as in February, 1996 and the said proposal is still not decided by the Director and when the Municipality needs one Sanitary Inspector for providing essential services to the residents in the town, termination of the petitioner's services only on the ground that the Director of Municipalities has not decided the proposal would be arbitrary and unreasonable.

5. On the other hand, Mr Kogje learned AGP for the Director of Municipalities and the Collector, Junagadh has submitted that since the Municipality had not obtained permission of the Director or Collector before making the appointment of the petitioner, the petitioner has no right to continue to hold the post in question.

6. Having heard the learned counsel for the parties and having regard to the peculiar facts and circumstances of the case including the fact that the Kodinar Municipality (at that time Kodinar Nagar Panchayat) had submitted the proposal to the Director of Municipality as far back as on 12-2-1996 (Annexure B) and the appointment of the petitioner was made after inviting applications through a public advertisement and having regard to the fact that the case of the Municipality is that one permanent post fell vacant on 30-11-2001 upon superannuation of one Mr HD Saluke in the Recovery department, the Municipality is prepared to have the said permanent post abolished and one post of Sanitary Inspector being created against the said post and therefore there will not be much overall adverse impact on the finances of the Municipality, this appears to be a fit case for directing that if the Municipality submits a fresh proposal to the Director of Municipalities by 30-10-2002, in continuation of the earlier proposal dated 12-2-1996, setting out all the relevant facts and justification including vacancy available in one permanent post from 30-11-2001 upon retirement on superannuation of Mr HD Saluke and the need of one Sanitary Inspector for providing essential services to the residents in the town, the Director shall consider such proposal/representation as expeditiously as possible and in any case within two months from the date of receipt of the proposal/representation.

Till the Director of Municipalities takes a final decision on the proposal/representation, the services of the petitioner shall not be terminated.

In case the decision of the Director is adverse to the Municipality and/or to the petitioner, the same shall not be implemented for a period of one month from the date of communication of the decision to the Municipality and the petitioner.

7. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M.S. Shah,J)

zgs/-